

## REMARKS

### I. Claim Objections

Claim 30 is objected to because the Examiner asserts that "can be" does not clearly define whether the communication of information is performed in real-time. Applicants traverse this objection, since claim 30 recites a device with circuitry that will sufficiently throttle the data so that communication of information can be performed in real-time. In other words, it is not necessary that an allegedly infringing device actually be transmitting information in real-time for the device to be covered by claim 30. It would be sufficient that the data is throttled sufficiently so that such information could be communicated in real-time if such information was communicated.

Nevertheless, Applicants have amended claim 30, without prejudice, in order to move this Application towards allowance.

### II. Specification

The Examiner has asserted that the Specification, on page 12, lines 5-10, and Figure 4, steps 1104 and 1105, describing that if the level of packets buffered by the jitter buffer falls below the predetermined threshold the process will send a congestion message does not make sense because there should not be congestion when the level in the jitter buffer falls below the predetermined threshold. In response, Applicants respectfully traverse this objection. The reason the Examiner is objecting to this portion of the description is that the Examiner does not appreciate how the jitter buffer operates within embodiments of the present invention. As audio (voice) data packets are received, they are saved within the jitter buffer, which fills up to a certain level. Specification, page 11, lines 17-22. After this level is reached, the audio packets will then be played by the telephony device to the user. Specification, page 11, lines 22-23. When a packet is played to the user, it is then replaced in the jitter buffer by another incoming packet. When these audio packets are not sufficiently replaced in the jitter buffer, then the ability of the telephony device to communicate the audio information to the user in real-time becomes jeopardized. Specification, page 11, line 24 -- page 12, line 3. As a result, when the level of packets within the jitter buffer falls below a certain level, meaning that the packets are

not being received by the system (or, the incoming flow of packets has decreased)), then that is an indication that there is too much congestion in the line through which the audio packets are being transmitted to the telephony device. Thus, a fewer number of audio data packets within the jitter buffer actually does mean that there is congestion on the incoming line not permitting a sufficient number of audio data packets to be sent to and received by the telephony device. As a result of the foregoing, the portion of the Specification objected to by the Examiner does make logical sense in accordance with embodiments of the present invention.

### III. Rejections Under 35 U.S.C. § 112

Claims 1-2, 30, and 35 stand rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. More specifically, the Examiner is asserting that the structure of IP telephone 313 described in the Specification at pages 9-11 and Figure 2 does not disclose circuitry in the IP telephone for throttling data sent from the first network device. Applicants respectfully traverse.

Figure 2 illustrates a block diagram of IP telephone 313, which includes a DSP 801. This DSP 801 executes various kinds of algorithms, including those implemented within the present invention. Specification, page 9, lines 18-25. Figure 4 illustrates a process (algorithm) that detects network congestion and notifies a throttling process with a congestion message. Specification, page 11, lines 13-14. This process may be operated within the DSP 801. Specification, page 11, lines 11-13. The processes described with respect to Figures 6A and 6B may also be implemented within DSP 801 in IP telephone 313. Specification, page 14, lines 4-6. The QOS algorithm described with respect to Figure 5 may also be operated as a process within DSP 801. Specification, page 14, lines 10-13. These processes make use of the jitter buffer, which may also be implemented within software in IP telephone 313.

As can be seen within the Specification, including the above noted citations, the processes may be implemented within the DSP 801, which resides within the IP telephone 313, and thus the circuitry for throttling of data sent from the network is supported within the Specification.

#### IV. Rejections Under 35 U.S.C. § 102

Claims 1-7, 9-10, and 14-15 stand rejected under 35 U.S.C. § 102(e) as being anticipated by *Hahn et al.* (U.S. Patent No. 7,161,905). In response, Applicants respectfully traverse these rejections. As the Examiner is well aware, for a claim to be anticipated under § 102, each and every element of the claim must be found within the cited prior art reference.

The Examiner asserts that the first telephony device recited within the claims is taught by the communication device 200 in Fig. 2 of *Hahn*. Furthermore, the Examiner asserts that the network interface 202 in Fig. 2 teaches the modem recited within the claims, and then asserts that routers in the IP network 102 shown in Fig. 1 teaches the first network device. Under such an interpretation of the teachings of *Hahn*, it is clear that *Hahn* does not anticipate the rejected claims.

Claim 1 recites that the first network device is coupled to the modem through the first telephony device. It is unreasonable to assert that a router within IP network 102 is coupled to the network interface 202 through the communication device 200. Network interface 202 is connected to a communication link 112, which is connected to IP network 102. Therefore, the only apparatus through which network interface 202 is coupled to a router in IP network 102 is a communication link 112, which is not a modem.

In contrast, *Hahn* discloses that the communication device 200 is coupled to a router in IP network 102 through network interface 202. However, such an arrangement does not meet the limitations of the claim. The identical invention must be shown in as complete detail as is contained in the claim. MPEP 2131.

Though claims are to be given a broad interpretation by the Examiner, such an interpretation must be reasonable and consistent with the specification. MPEP 2111. Reading a claim in light of the specification, to thereby interpret limitations explicitly recited in the claim, is different than reading limitations of the specification into a claim to thereby narrow the scope of the claim by implicitly adding disclosed limitations that have no express basis in the claim. *Id.* With respect to the presently rejected claims, the term “through” is explicitly recited in the claim. As a result, interpretation of this limitation by looking to how it is defined or explained within the Specification is permissible, and the Examiner must interpret this claim limitation to be consistent with such a description within the Specification. Referring to Figure 3, the work

station PC 312 (i.e., the first network device) is coupled to the modem 310 through the IP telephone 313. Specification, page 4, lines 5-7; page 8, lines 4-18.

To equate to the Examiner's interpretation, the modem 310 would have to be coupled between the PC 312 and the IP telephone 313, which is clearly not what is described and illustrated in the Specification. As a result, the Examiner's interpretation of the claim language is unreasonably broad, and *Hahn* does not anticipate the claim language.

Claim 2 is also not anticipated by *Hahn* for reasons similarly given above with respect to Claim 1.

Regarding Claim 9, since this claim depends from Claim 8, which the Examiner has determined is allowable, then Claim 9 cannot be rejected under § 102 as being anticipated by *Hahn*. Likewise, with respect to Claim 10.

#### V. Rejections Under 35 U.S.C. § 103

Claims 30-34 stand rejected under 35 U.S.C. § 103 as being unpatentable over *Hahn*. In response, Applicants respectfully traverse this rejection.

Again, the Examiner is rejecting these claims based on unreasonably broad interpretations of the claim language. The Examiner admits that *Hahn* does not disclose an input data port for receiving data, wherein the data is addressed for transmission to a location other than the telephony device through an output port on the telephony device. To overcome this deficiency, the Examiner points to the user interface 210 shown in Fig. 2 of *Hahn*, and asserts that one skilled in the art would have replaced a handset on telephone 200 with an input port for receiving data addressed for transmission to another IP telephone device 200 through the IP network 102, and under such an interpretation, the analog voice signals received by the user interface 210, which are then digitized by CODEC 208, can be replaced by digital data that is accompanied by some sort of address code so that it is properly transmitted to some other device over the IP network 102.

Claim 30 further recites that this data is sufficiently throttled so that communication of information to and from the telephony device can be performed in real-time. Therefore, under the Examiner's obviousness rejection analysis above, the data received at the user interface 210 would have to be throttled to meet the claim limitations. The problem with such an interpretation

is that neither DSP 206 nor processor 204 throttles the digitized voice sent by communication device 200 to the network 102. It is the voice data packets that are coming into the communication device 200 from network 102 through network interface 202, and ultimately for playback to a user over user interface 210, that are dropped when the jitter buffer 214 becomes too full. As a result, if one skilled in the art would modify communication device 200 as suggested by the Examiner, such a modified device would still not meet the limitations of Claim 30.

Another way of analyzing how the Examiner's rejection does not make logical sense is as follows. The Examiner is essentially now equating the data recited in Claim 30 with the information recited in Claim 30. Note that in Claim 30, the data is throttled so that the information is communicated in real-time. *Hahn* only teaches one stream of data transmitted to and from communication device 200. Throttling the data, as interpreted by the Examiner, would be throttling the data received at user interface 210 for transmission out of communication device 200. But, then there is no teaching in *Hahn* for the information that is communicated to and from communication device 200 that benefits from such data throttling. As can be readily seen, the Examiner's interpretation does not make logical sense.

Regarding Claim 32, the Examiner makes the unsupported statement that *Hahn* teaches level 2 switching circuitry. Applicants traverse the Examiner's assertion that it is not supported with any objective evidence.

Claims 16-29 and 35-41 stand rejected under 35 U.S.C. § 103 as being unpatentable over *Hahn* in view of *Lai et al.* (U.S. Patent No. 6,600,737). In response, Applicants respectfully traverse these rejections.

As with Claim 1, *Hahn* does not disclose that a workstation is coupled to the modem through the telephone. In this interpretation of *Hahn*, the Examiner is asserting that the claimed workstation is a first device 200 and the claimed telephone is a second device 200, where the two devices 200 are coupled to each other through the network 102, so that the Examiner can "fit" *Hahn* to the recited language by then being able to assert that there is a modem (i.e., network interface 202) residing between a workstation 200 and a telephone 200. But, as the Examiner has admitted, such an interpretation is lacking in that *Hahn* then does not teach or suggest

throttling data sent from the workstation 200 through the network 102 to the telephone 200 to increase a rate of transfer of audio information being communicated between the telephone 200 and the network 102. To overcome this deficiency, the Examiner looks to the teachings of *Lai*. *Lai* is concerned with the transferring of data from a server 206 to a client 202. Column 4, lines 6-8. The data being transferred is non-voice data. Column 4, lines 9-15. The client 202 may send a transfer data rate message to the server 206 so that the server 206 can determine the rate at which to transfer the data from the server 206 to the client 202. Column 4, lines 20-30. If the client 202 determines that more bandwidth is needed for voice data, then it can send a lower transfer data rate input to the server 206 to decrease the bandwidth allocated to the non-voice data by causing the server 206 to decrease the rate by which it sends its non-voice data out to the Internet 204. Column 4, lines 31-50.

As noted above, though the combination of references may disclose that a computer 200 may send data to the network via a network interface 202, this still does not get past the fact that Claim 16 recites that the workstation is coupled to the modem through the telephone. In all interpretations of the teachings of *Hahn*, the modem will always lie between a workstation and a telephone, but this is not what the claim recites. As noted above with respect to Claim 1, Claim 16 has the telephone between the workstation and the modem. The Examiner must interpret the claim language to be consistent with the figures and description in the Specification.

And, *Lai* does not overcome this deficiency, since in *Lai*, a modem will also reside between the server 206 and the telephone 202. As a result, the combination of the references does not meet all of the limitations of Claim 16. All words in a claim must be considered in judging the patentability of that claim against the prior art. MPEP 2143.03.

Likewise, Claim 22 is also patentable over the cited prior art references, since Claim 22 recites that the telephony device is coupled between the network device and the modem. Moreover, the combination of the references does not teach or suggest that data is addressed for transmission through the telephony device to the wide area network via the modem.

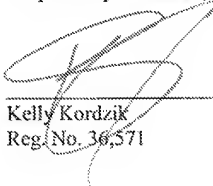
Claim 26 is patentable for reasons similarly given above with respect to Claim 32.

In rejecting Claim 35, the Examiner has asserted that *Hahn* discloses a first network device coupled to the first modem via the first IP telephone so that data communicated between the first network device and the first modem is switched through the first IP telephone. The

Examiner further asserts that *Hahn* teaches such limitations by asserting that *Hahn* discloses "routers in packet network 102 transmits [sic] packet to ip [sic] telephone 200 via modem 202." The problem with this statement by the Examiner is that it does not meet the claim limitations. The claims recite that the first network device is coupled to the first modem via the first IP telephone. This is not the same as the first network device coupled to the first IP telephone via the first modem, which is how the claim would have to be recited to meet the Examiner's interpretation of the teaches in *Hahn*. Nowhere in *Hahn* or *Lai*, or their combination, is it taught or suggested that a first network device is coupled to a first modem via a first IP telephone. Furthermore, the combination of references does not in any way teach or suggest that under this arrangement the data communicated between the first network device and the first modem is switched through the first IP telephone. Under the Examiner's interpretations of these references, the IP telephone would be represented by communication device 200 in *Hahn* and by client 202 in *Lai*. There is nothing within these references, individually or in combination, that teaches or suggests that data is switched through client 202 or communication device 200. And, moreover, these references do not teach or suggest that such data switched through the IP telephone is communicated between a first network device and a first modem.

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Respectfully submitted,



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